

AMENDED IN ASSEMBLY APRIL 15, 2013

AMENDED IN ASSEMBLY APRIL 4, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 35

Introduced by Assembly Member Roger Hernández

December 3, 2012

An act to add Section 22449 to the Business and Professions Code, to ~~add~~ *amend* Section ~~1251.5 to 1264~~ of the Unemployment Insurance Code, and to amend Section 12801.6 of the Vehicle Code, relating to childhood arrivals.

LEGISLATIVE COUNSEL'S DIGEST

AB 35, as amended, Roger Hernández. Deferred action for childhood arrivals.

(1) Under existing federal law, the Secretary of the Department of Homeland Security has issued a directive allowing certain undocumented individuals who meet several key criteria for relief from removal from the United States or from entering into removal proceedings to be eligible to receive deferred action for a period of 2 years, subject to renewal, and who will be eligible to apply for work authorization.

Existing law provides for the regulation of immigration consultants by the Department of Consumer Affairs, the licensure and regulation of attorneys by the State Bar of California, and the commission of notaries public by the Secretary of State. A violation of certain of these provisions is a crime.

This bill would provide that immigration consultants, attorneys, ~~and~~ notaries public, *and organizations accredited by the United States Board of Immigration Appeals* shall be the only individuals authorized to

charge clients or prospective clients a fee for providing services associated with filing an application under the deferred action program. The bill also would prohibit immigration consultants, attorneys, ~~and~~ notaries public, *and organizations accredited by the United States Board of Immigration Appeals* from participating in practices that amount to price gouging, as defined, when a client or prospective client solicits these services. By expanding the definition of a crime, this bill would impose a state-mandated local program.

(2) Commencing January 1, 2013, state law provides that any federal document demonstrating favorable action by the federal government for acceptance of a person into this deferred action program shall satisfy specified requirements for the purposes of being authorized to receive an original driver's license from the Department of Motor Vehicles, as described.

This bill would provide that these provisions also apply for the purposes of being authorized to receive a California identification cards.

(3) Existing law provides for unemployment compensation benefits to eligible persons who are unemployed through no fault of their own. *Existing law establishes the Unemployment Fund, a continuously appropriated fund, for the receipt of employer contributions and the payment of employment compensation benefits. Existing law makes it a crime for a person to commit various acts, including making or signing a false statement or supplying false information in connection with obtaining unemployment benefits, as specified.*

Existing law provides that unemployment compensation benefits, and other related benefits, as specified, shall not be payable on the basis of services performed by a person who is not a citizen of the United States, unless that person is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed.

~~This bill would, to the extent permitted by federal law and contingent on the appropriation of funds, provide that, to the extent authorized by federal law, if a person who has received a notice of decision from the federal government granting deferred action under the deferred action federal Deferred Action for Childhood Arrivals program shall be and if that person performed the services while he or she was in receipt of a valid employment authorization from the federal government, he or she is a person who was lawfully present for purposes of performing~~

the services and is eligible for unemployment compensation benefits, as specified.

(4) The bill would state that the provisions of the bill are declarative of existing law.

~~(4)~~

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22449 is added to the Business and
2 Professions Code, to read:

3 22449. (a) Immigration consultants, attorneys,~~and~~ notaries
4 public, *and organizations accredited by the United States Board*
5 *of Immigration Appeals* shall be the only individuals authorized
6 to charge clients or prospective clients fees for providing
7 consultations, legal advice, or notary public services, respectively,
8 associated with filing an application under the ~~deferred action for~~
9 ~~childhood arrivals~~ *federal Deferred Action for Childhood Arrivals*
10 program announced by the United States Secretary of the
11 ~~Department of Homeland Security~~ on June 15, 2012.

12 (b) (1) Immigration consultants, attorneys,~~and~~ notaries public,
13 *and organizations accredited by the United States Board of*
14 *Immigration Appeals* shall be prohibited from participating in
15 practices that amount to price gouging when a client or prospective
16 client solicits services associated with filing an application for
17 deferred action for childhood arrivals as described in subdivision
18 (a).

19 (2) For the purposes of this section, “price gouging” means any
20 practice that has the effect of pressuring the client or prospective
21 client to purchase services immediately because purchasing them
22 at a later time will result in the client or prospective client paying
23 a higher price for the same services.

24 (c) (1) In addition to the civil and criminal penalties described
25 in Section 22445, a violation of this section by an attorney shall

1 be cause for discipline by the State Bar pursuant to Chapter 4
2 (commencing with Section 6000) of Division 3.

3 (2) In addition to the civil and criminal penalties described in
4 Section 22445, a violation of this section by a notary public shall
5 be cause for the revocation or suspension of his or her commission
6 as a notary public by the Secretary of State and the application of
7 any other applicable penalties pursuant to Chapter 3 (commencing
8 with Section 8200) of Division 1 of Title 2 of the Government
9 Code.

10 ~~SEC. 2. Section 1251.5 is added to the Unemployment~~
11 ~~Insurance Code, to read:~~

12 ~~1251.5. (a) Notwithstanding any other law, a person who has~~
13 ~~received a notice of decision from the federal government granting~~
14 ~~deferred action under the deferred action for childhood arrivals~~
15 ~~program announced by the United States Secretary of the~~
16 ~~Department of Homeland Security on June 15, 2012, shall be~~
17 ~~eligible for unemployment compensation benefits as provided in~~
18 ~~this article.~~

19 ~~(b) Eligibility for benefits under subdivision (a) shall be~~
20 ~~contingent on receipt of employment authorization from the federal~~
21 ~~government.~~

22 *SEC. 2. Section 1264 of the Unemployment Insurance Code is*
23 *amended to read:*

24 1264. (a) (1) Unemployment compensation benefits, extended
25 duration benefits, and federal-state extended benefits shall not be
26 payable on the basis of services performed by an alien unless the
27 alien is an individual who was lawfully admitted for permanent
28 residence at the time the services were performed, was lawfully
29 present for purposes of performing the services, or was permanently
30 residing in the United States under color of law at the time the
31 services were performed, including an alien who was lawfully
32 present in the United States as a result of the application of the
33 provisions of Section 203(a)(7) or Section 212(d)(5) of the
34 Immigration and Nationality Act.

35 (2) *For purposes of paragraph (1), and only to the extent*
36 *authorized by federal law, an alien who (A) is the subject of a*
37 *notice of decision from the federal government granting deferred*
38 *action under the federal Deferred Action for Childhood Arrivals*
39 *program announced by the United States Secretary of Homeland*
40 *Security on June 15, 2012, and (B) performed the services while*

1 *he or she was in receipt of a valid employment authorization from*
2 *the federal government, is a person who was lawfully present for*
3 *purposes of performing those services.*

4 (b) Any data or information required of individuals applying
5 for benefits specified by subdivision (a) to determine whether these
6 benefits are not payable to them because of their alien status shall
7 be uniformly required from all applicants for these benefits.

8 (c) In the case of an individual whose application for benefits
9 specified by subdivision (a) would otherwise be approved, no
10 determination by the department, an administrative law judge, or
11 the appeals board that these benefits to the individual are not
12 payable because of his or her alien status shall be made except
13 upon a preponderance of the evidence.

14 (d) If an alien presents evidence that the Immigration and
15 Naturalization Service has granted the alien employment
16 authorization as a result of the alien's application for temporary
17 residence status under the federal Immigration Reform and Control
18 Act of 1986 (Public Law 99-603), pending a final determination
19 on this application the department shall not do either of the
20 following:

21 (1) Commence or continue to pursue any administrative or
22 judicial action to collect benefits where there has been a final
23 determination that these benefits have been overpaid or chargeable
24 to the alien, because of the alien's immigration status at the time
25 he or she performed the services compensated by his or her base
26 period wages.

27 (2) Determine that the alien was overpaid benefits in the current
28 benefit year or in any prior benefit year, if the basis for the
29 determination is the assumption that because the alien is an
30 applicant for temporary resident status he or she was not, while
31 performing the services compensated by base period wages,
32 lawfully admitted for permanent residence, lawfully present for
33 purposes of performing the services that were compensated by his
34 or her base period wages, or permanently residing in the United
35 States under color of law.

36 (e) If the Immigration and Naturalization Service grants the
37 application and adjusts the alien's status to that of lawful temporary
38 resident, the department shall not take any action described in
39 paragraph (1) of subdivision (d) or make any determination
40 described in paragraph (2) of subdivision (d). If an alien is not in

1 the status of being lawfully admitted for permanent residence,
2 lawfully present for the purpose of performing the services
3 compensated by his or her base period wages, or permanently
4 residing in the United States under color of law, at the time the
5 alien's lawful temporary permanent status terminates, then
6 compensation shall not be payable on the basis of services
7 performed by the alien after the termination.

8 (f) Nothing in subdivision (d) shall be construed to require the
9 department to do any of the following:

10 (1) Repay any amounts collected under any present or past
11 action as described in paragraph (1) of subdivision (d).

12 (2) Redetermine the eligibility for unemployment compensation
13 benefits of any alien who the department originally determined to
14 be ineligible because of the alien's status at the time he or she
15 performed the services compensated by his or her base period
16 wages and with respect to whom the determination has become
17 final.

18 (3) Apply subdivision (d) or (e) retroactively.

19 (g) If the United States Secretary of Labor finds that subdivisions
20 (d) and (e) are not in conformity with the federal Unemployment
21 Tax Act, and effective as of the date that this finding becomes
22 final, subdivisions (d), (e), and (f) shall be inoperative and of no
23 legal force or effect.

24 (h) Unless subdivisions (d), (e), and (f) have earlier become
25 inoperative and of no legal force or effect pursuant to a finding by
26 the Secretary of Labor under subdivision (g), subdivisions (d), (e),
27 (f), and (g) shall remain in effect only until September 30, 1990,
28 and as of that date shall become inoperative, unless a later enacted
29 statute which is chaptered before September 30, 1990, deletes or
30 extends that date. Notwithstanding this subdivision, however, the
31 department shall not take any action to collect benefits from an
32 individual when the collection against that individual was
33 suspended pursuant to subdivision (e) prior to September 30, 1990.

34 SEC. 3. Section 12801.6 of the Vehicle Code is amended to
35 read:

36 12801.6. (a) Any federal document demonstrating favorable
37 action by the federal government for acceptance of a person into
38 ~~the deferred action for childhood arrivals~~ *federal Deferred Action*
39 *for Childhood Arrivals* program shall satisfy the requirements of
40 Section 12801.5.

1 (b) The department may issue an original driver's license or
2 California identification card to the person who submits proof of
3 presence in the United States as authorized under federal law
4 pursuant to subdivision (a) and either a social security account
5 number or ineligibility for a social security account number.

6 *SEC. 4. The provisions of this act are declarative of existing*
7 *law.*

8 ~~SEC. 4.~~

9 *SEC. 5.* No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.